

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPHAT HENRY, et al.

vs.

ST. CROIX ALUMINA, LLC, et al.

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CIVIL NO. 1999/0036

DEFENDANTS ALCOA INC., ST. CROIX ALUMINA, LLC, AND
GLENCORE LTD.'S MOTION *IN LIMINE* TO PREVENT
THE USE OF THE TERM "RED MUD"

Defendants anticipate that Plaintiffs will repeatedly use the term "red mud" to refer to the red material that was released from the St. Croix Alumina facility during Hurricane Georges and reached Plaintiffs' property. However, this Court has already observed that there is no evidence that red mud ever escaped from the facility during the hurricane.

The only direct evidence concerning the chemical nature of that material, however, comes from post-hurricane testing conducted by the DEP and the Environmental Protection Agency ("EPA"). Those agencies collected samples from thirty-three allegedly affected cisterns, including two belonging to plaintiffs. They concluded that "the red dust [deposited in the neighborhoods surrounding the Refinery] is in fact bauxite."¹

Despite this observation, as evidenced by their statements in the third version of Plaintiffs' portion of the Joint Final Pretrial Order, Defendants believe that Plaintiffs will continuously use the term "red mud" to refer to the material that stained their property. This casual, but incorrect, use of the term implies that the red material came from the

¹ Memorandum dated Aug. 28, 2009, Doc. No. 1339, p. 5.

red mud piles at the St. Croix Alumina facility. However, this is not the case. Accordingly, this Court should exclude all use of the term “red mud.”

ARGUMENT AND AUTHORITIES

1. The use of the term “red mud” is unfairly prejudicial to Defendants.

Red mud is the byproduct of the Bayer process, the principal industrial means of refining bauxite to produce alumina. Bauxite, the red material this Court has observed was released from the St. Croix Alumina facility, is naturally occurring dirt with a high alumina content. Red mud contains substances not present in bauxite, and has been argued by Plaintiffs to be more toxic than bauxite. Plaintiffs use the term “red mud” to refer to the red material that was blown from the refinery during Hurricane Georges, even though red mud differs significantly from bauxite, most importantly in its level of toxicity.

Based on Plaintiffs’ incorrect use of the term “red mud,” the jury could wrongly conclude that the material that stained Plaintiffs’ property came from the red mud piles at the St. Croix Alumina facility. The jury may then believe that the material that stained Plaintiffs’ property was allegedly toxic. Allowing Plaintiffs to use the term “red mud” to create such a belief would unfairly prejudice Defendants, as the jury might be inclined to presume that the red material caused more damage than it actually did as a result of its alleged toxicity. Therefore, this Court should exclude all use of the term “red mud” at trial.

CONCLUSION

The use of the term “red mud” should be excluded because it is unfairly prejudicial to Defendants. In addition, this Court should instruct the jury that the use of

the term “red mud” should not be used by the jury to conclude that red mud escaped from the St. Croix Alumina facility and made it into Plaintiffs’ neighborhoods.

Respectfully submitted this 9th day of September, 2011.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 9, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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